

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LARRY G. PHILPOT,

Plaintiff,

v.

THE HEART GENERAL
PARTNERSHIP; and JOHN OR JANE
DOES 1-5,

Defendants.

C20-857 TSZ

MINUTE ORDER

The following Minute Order is made by direction of the Court, the Honorable Thomas S. Zilly, United States District Judge:

(1) This case has been pending since June 2020 and, to date, defendants have not been served. By Minute Order entered October 7, 2020, docket no. 5, the Court extended the deadline for serving the complaint to November 9, 2020, and required plaintiff to file a status report. Plaintiff failed to timely file a status report, and by Minute Order entered November 16, 2020, docket no. 6, the Court directed plaintiff to show cause why this matter should not be dismissed pursuant to Federal Rule of Civil Procedure 4(m). After considering plaintiff's response, the Court extended the deadline for serving the complaint to January 31, 2021. See Minute Order (docket no. 8). On February 1, 2021, plaintiff filed a status report, docket no. 9, indicating that efforts to serve Nancy Wilson at 1540 Manzanita Ave in Santa Rosa, California had been unsuccessful, and that plaintiff would "promptly" file a motion for service by publication and mail. More than sixty (60) days have elapsed, and no such motion has been submitted. Plaintiff has been given two extensions and more than ten (10) months to

1 effect service, and does not seem to be acting diligently to do so.¹ This case is therefore
2 DISMISSED without prejudice pursuant to Rule 4(m).

3 (2) The Clerk is directed to send a copy of this Minute Order to all counsel of
4 record.

5 Dated this 9th day of April, 2021.

6 William M. McCool
7 Clerk

8 s/Gail Glass
9 Deputy Clerk

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19 ¹ The attempts to serve Nancy Wilson consisted of appearing at a locked gate on seven occasions
20 between November 27, 2020, and December 7, 2020, and receiving no answer to calls from the
21 gate key pad. *See* Nichols Aff. (docket no. 9-1). No information has been provided to suggest
22 that anyone was at the property or monitoring the gate communication system. Given that the
23 first attempt was made on the day after Thanksgiving, and that all attempts were made within a
ten-day period, a reasonable conclusion is that the occupants of the premises were temporarily
away, perhaps for the holidays. Absent a stronger showing, plaintiff would not be entitled to an
order permitting service by publication or mail.